

Elections and Freedom of Peaceful Assembly

ODIHR Expert Panel on Freedom of Assembly

The right to organise and participate in a peaceful assembly is one of the fundamental freedoms and a cornerstone of any democratic society. Public assemblies provide an opportunity for the mobilisation and display of support for diverse opinions including for radical, marginal and unpopular positions and the views of minority groups.

Public assemblies often become increasingly prominent and significant in the context of elections as political parties, candidates and other groups and organisations seek to publicise their views and mobilise support.

Public assemblies can also be regarded as particularly contentious at election time, they can be considered as a threat by the state and may be subjected to a variety of constraints and restrictions.

This brief document highlights some of the basic principles and key issues related to freedom of assembly as set out in the OSCE/ODIHR – CoE/Venice Commission Guidelines on Freedom of Peaceful Assembly (hereafter *Guidelines*) and which may have specific pertinence to election times.

Legal Framework

The right to freedom assembly is set out in Article 11 of the European Convention on Human Rights, Article 20 of the Universal Declaration of Human Rights, and Article 21 of the International Covenant on Civil and Political Rights.

Definition of an Assembly

The *Guidelines* defines an assembly as ‘*an intentional and temporary presence of a number of individuals in a public place, that is not a building or structure, for a common expressive purpose*’. Typical examples of a public place are a street, sidewalk, park, or similar location.

This does not mean that assemblies held inside buildings or on private property are not subject to protection, but rather that they are usually subjected to different regulatory regimes, and there is a greater presumed right to use **open public spaces** for all forms of public assembly.

There is no clear definition of the ‘**temporary**’ nature of an assembly, but a recent case before the European Court of Human Rights (*Eva Molnar v Hungary*, 2008) regarded eight hours as a reasonable duration for a spontaneous assembly before it was dispersed by the police.

Only **peaceful assemblies** are protected under law, but it should be noted that an assembly should be deemed peaceful as long as the organisers have peaceful

intentions for their event. This is not undermined by the possibility of an assembly provoking opposition, as the concept of peaceful does not preclude assemblies that cause temporary interference with daily routines, **cause offence** or annoyance to groups or individuals or present controversial or challenging views.

Principles Underpinning Right to Freedom of Peaceful Assembly

In the first of six ‘guiding principles’ the *Guidelines* emphasise that: ‘As a *fundamental right, freedom of assembly should, insofar as possible, be enjoyed without regulation. That anything not expressly forbidden in law should be presumed to be permissible, and those wishing to assemble should not be required to obtain permission to do so*’. This does not mean that a state cannot require prior **notification** of an assembly in order to facilitate the management of public order, but this should be a process of notifying the authorities, rather than seeking permission from them.

The second principle states that: ‘It is the **responsibility of the state** to put in place adequate mechanisms and procedures to ensure that the freedom of assembly is enjoyed in practice and is not subject to unduly bureaucratic regulation’.

Taken together, the definitions and first two principles, set out a responsibility on the state to **facilitate** the right to freedom of assembly, rather than seek to impose unnecessary or disproportionate limits on public assemblies. This includes a responsibility to **provide traffic control** so as to facilitate the assembly, and respond sensitively to such matters as unlawful assemblies, spontaneous assemblies and simultaneous assemblies.

Unlawful Assemblies: These include assemblies that have failed or refused to notify according to legal requirements, or events that have been banned or had restrictions imposed on them. Recent ECtHR judgements (*Oya Ataman v Turkey*, 2007; *Balcik v Turkey*, 2007) have emphasised that ‘*where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance*’, and the police should refrain from the use of force to disperse participants.

Spontaneous Assemblies: It is important that the authorities allow for people to respond at short notice to news or events (*Eva Molnar v Hungary*, 2008), while any notification requirements should not be used to impose unreasonable limits on spontaneous demonstrations.

Simultaneous Assemblies: These include occasions when two or more organisations seek to assemble in close proximity, or when a group plan to protest against another assembly. The ECtHR (*Ollinger v Austria*, 2006) has emphasised that where possible the authorities should take measures to ensure all assemblies can take place, rather than use the notification of simultaneous events as a justification of imposing unreasonable restrictions.

Restricting Freedom of Peaceful Assembly

It is nevertheless at times both necessary and reasonable for the authorities to impose restrictions on peaceful assemblies. Article 11.2 of the European Convention sets out the conditions under which assemblies may be restricted: *‘No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others’*.

The *Guidelines* emphasise the importance of the **legality** of any restrictions, which in turn must be compatible with international human rights law and should be set down in a manner that is precise and comprehensible; and the need for **proportionality**, with a preference always given to the least intrusive means of restriction or control.

A threat to **public order** is the most frequently cited reason for imposing **prior restrictions** on assemblies but, as noted above, the focus should be on the intention of the organisers of an event and the responsibility of the authorities to maintain order and facilitate public assemblies.

Nevertheless restrictions may legitimately be imposed following the rubric of ‘reasonable regulation of **time, place and manner**’: that is by restricting the time or date that an assembly takes place, the location of the assembly and the manner or form of the assembly. However, wherever possible such restrictions should be imposed following dialogue or consultation with the organisers and an alternative time, date or venue should be offered rather than imposing a total ban on an assembly.

Prohibiting a peaceful assembly should be a matter of last resort and should only be imposed in response to a serious threat of violence and disorder associated with a particular assembly.

Blanket prohibitions on assemblies should only be imposed in extreme circumstances. It is not uncommon for states to try to restrict assemblies close to prominent public locations, such as a parliament, presidential offices or other key buildings due to concern of a disruption to other people or the work of the state.

However, another key principle is that an assembly should be able to take place within ‘**sight and sound**’ of its target subject. Assemblies are always expressive activities and to prevent or unduly restrict participants from conveying their message effectively serves to undermine the fundamental nature of the right.

Similarly, it is not considered acceptable to force assembly organisers to relocate or hold their events in **remote locations** or away from the centre of cities or the target audience. This inevitably undermines the principle of ‘sight and sound’ and will limit the effectiveness of any event.

Restrictions may be imposed by the authorities **during an event** if the assembly or its participants becomes disorderly. But restrictions should not be imposed on the **content** of speeches or visual displays at public assemblies except in extreme

situations whereby they seek to promote hatred or where they incite imminent acts of violence (*Osmani and Other v FYROM*, 2001). However, again a high threshold should be employed in such circumstances.

Policing of Assemblies

The police have an important **responsibility to protect** the right to freedom of peaceful assembly and to ensure that public order is maintained in a reasonable manner during and throughout the presence of an assembly. It has been widely noted that inappropriate or excessive police interventions at public assemblies can lead to violence and disorder.

It is important to note that all assemblies will cause some degree of **disruption to daily routines**, but the street and other public spaces are the legitimate sites for assemblies as much as they are public thoroughfares for vehicles and pedestrians.

Police officers should be appropriately trained in **crowd management** principles and practice and should be appropriately equipped both to provide protection to individual police officers and enable them to maintain order.

As noted, peaceful assemblies should be facilitated wherever possible. The **enforced dispersal** of a public assembly should only take place as a measure of last resort and when there is an imminent threat of violence **or undue disruption of nearby activities**.

The **use of force** by the police should always be regulated by domestic law. The use of force at an assembly should be restrained and kept to the minimum extent necessary and should comply with international standards such as the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*.

Police officers should be held **liable and accountable** for their actions in relation to the policing of public assemblies.

Other Parties

Human rights defenders have a right to be present at public assemblies and have a positive role to play in monitoring compliance with human rights. The authorities have a responsibility to facilitate their presence at such events.

Similarly the **media** have a right to attend and report on peaceful assemblies and law enforcement officials have a responsibility not to prevent or obstruct their work.

Both human rights defenders and members of the media should be distinguished from participants in public assemblies and should not be subjected to unnecessary restrictions on their activities by the authorities.